

## **FRIDAY UPDATE—JANUARY 14, 2005**

*The weekly update of the activities of the Indiana General Assembly  
A publication of the Indiana Judicial Center*

The second week of the 2005 legislative session is complete and a lot has occurred in that time. Once again, the Indiana Judicial Center will report on matters of interest to the judiciary. Below are reports on bills discussed these past two weeks.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at [http://www.in.gov/serv/lisa\\_billinfo](http://www.in.gov/serv/lisa_billinfo).

### **CIVIL LAW:**

The House Judiciary Committee heard HB 1130 concerning legal actions involving state liens, which was presented by Rep. Foley. This bill provides that if the state has a lien or encumbrance on real property and an action is filed concerning a lien or encumbrance of greater priority than the lien or encumbrance of the state may be considered in the action and decided by the court. The bill outlines the contents of the notice to the state and the status of the state's lien or encumbrance if the state chooses not to answer the notice. Testimony in support of this bill was received from the Attorney General's Office. The Committee removed two subsections of the bill that do not conform to Indiana procedures. The bill passed as amended 12-0.

The House Judiciary Committee also heard HB 1262 concerning bankruptcy and exemption amounts, which was presented by Rep. Kuzman. This bill would increase the exemption amounts for property subject to bankruptcy proceeding. There were two amendments adopted by the Committee, one addressed 529/530 plans and the second the rule giving authority to the department of financial institutions to make future adjustments to exemption amounts. The Indiana State Bar Association testified in support of the bill, which passed as amended 11-0.

The House Insurance Committee heard HB 1196 concerning limiting liability for pain and suffering damages for a cause of action to \$500,000 if it accrues after June 30, 2005, and to \$700,000 if it accrues after December 31, 2007. It limits the aggregate damages for any one occurrence to \$5 million and prohibits advising the jury of the limits. Testimony in support of the bill was offered by various insurance lobbyists, focusing on the need for predictability in insurance cases to reduce the cost of insurance. Testimony in opposition was offered by plaintiffs' attorneys, focusing on the need to permit larger verdicts in extraordinarily severe cases, such as paralysis, burns, and closed head injuries. The discussion ended when members of the committee left the meeting due to other commitments and the chair lost a quorum.

### **CRIMINAL LAW:**

Sen. Wyss explained to the Corrections, Criminal and Civil Matters Committee that SB 47 creating a new D felony "counterfeiting" offense will provide a less severe crime than C felony forgery to deal with significant increases in creation of counterfeit money by computers. Federal and state law enforcement officers and state prosecutors testified in support of the bill. The proposed offense is committed by knowingly or intentionally making or distributing counterfeit money, checks, stocks, or other valuable instruments. The bill was amended to require that commission of the offense by possession would require proof of the possessor's intent to defraud. There was no vote on the bill, as Sen. Wyss agreed to work with Legislative Services to improve the amended version before a vote at the next committee meeting.

Sen. Ford told Corrections, Criminal and Civil Matters members that SB 92 on Internet gambling will impose criminal penalties on those who provide (but not those who use) gambling websites for Indiana residents.

The Internet service providers, like AOL, which are used by these gambling websites will also be liable for the same penalties if they do not take action to block a gambling operation within thirty days of notice from a prosecutor of the operation. The legislation will also give the service providers a civil right of action with attorney fees against the gambling operators, so that providers can recoup their expenses to shut the gambling websites down. After amending the bill's definition of "interactive computer services," the Committee passed it by unanimous vote.

Sen. Zakas explained to the Corrections, Criminal, and Civil Matters Committee that a primary purpose of his SB 117 creating the crime of undisclosed transport of a dangerous device was to provide an Indiana offense to permit local airport security personnel to detain or arrest persons whose luggage is discovered to contain a firearm or fireworks. The bill, which applies to those who fail to disclose that items they deliver to airlines for transport contain firearms, explosives, destructive devices, or weapons of mass destruction, is necessary because federal Transport Security personnel are not law enforcement officers and cannot arrest persons for violation of the federal crimes for transporting such items by plane. The Committee amended the bill to make the offense an A misdemeanor, rather than a D felony, and then passed the bill.

Corrections, Criminal and Civil Matters Chair Sen. Long explained that SB 98 amends the probation revocation statute to allow a judge who revokes probation to require execution of less than the entire suspended sentence. The bill had been drafted and approved by the Sentencing Policy Study Commission, Sen. Long said. Sen. Long pointed out that the Court of Appeals opinion the bill was intended to counter had been vacated in December 2004 by the Supreme Court, which held that the revocation statute as now in effect allows the trial judge to order execution of any part of the suspended sentence. *Stephens v. State*, 818 N.E.2d 936 (Ind. 2004). The Committee agreed with testimony that the statute should be amended to expressly say that the revoking trial court may require less than the entire sentence to be served and voted unanimously to pass the bill.

Senate Judiciary heard SB 2 substituting "parenting time" for all uses of "visitation" in domestic relations statutes, and stating IV-D attorneys are not obliged to litigate parenting time credits. There was extensive discussion by members about the bill's language that prosecutors and other attorneys collecting support assignments to the state under IV-D contracts are "not required to mediate, resolve, or litigate a matter relating to parenting time or parenting time credit." The language in the bill was the product of compromise efforts of the Judicial Conference Domestic Relations Committee and the General Assembly's Child Custody and Support Advisory Committee. Author Sen. Ford and Steve Johnson of the Prosecuting Attorneys Council explained the bill's history and drafting, and attorney Andrew Soshnick, Chair of the State Bar Association's Family Law Section, expressed the Section's support for the bill. Committee members Steele, Lanane, and Chair Bray noted that, if only as a matter of local practices, a IV-D attorney would not be able to avoid litigating facts pertaining to the correct amount of parenting time credits in some cases. Sen. Long unsuccessfully urged the Committee to pass the bill with the understanding that language addressing members' concerns be amended in on second reading, and stated that he did not feel the bill would be passed unless it were amended to provide that parenting time credit factual issues and adjustments would not be made until a modification hearing. The Committee agreed to amend the bill by inserting language suggested by Legislative Assistant Hedges that IV-D attorneys would not be "required to mediate, resolve, or litigate disputes between the parties on a matter relating to parenting time or parenting time credit." The Committee then voted, unanimously, to pass the bill.

The Senate Judiciary Committee voted unanimously to pass SB 8 authorizing arbitration of family law proceedings if the parties agree to it. Sen. Ford, the bill author, explained that the bill died in conference committee last year due to issues concerning prenuptial agreements. Andrew Soshnick, Chair of the State Bar Association's Family Law Section, expressed the Section's support for the bill. In committee discussion it was agreed by members that the bill's provisions for property distribution in arbitrations did not mirror the statutory standards for litigated property distributions (e.g., such standards as the statutory presumption of a 50/50 split), and so an amendment expressly incorporating the dissolution statutory distribution standards for arbitration was adopted.

The Committee then unanimously passed the bill as amended.

Senator Ford presented his SB 49 on jurisdiction and venue for computer crimes. The bill provides that Indiana has jurisdiction of a crime

- involving the use of the Internet or other computer network if access to the network occurs in Indiana, or
- if conduct involves the use of the Internet, another computer network, or another form of electronic communication, and the conduct occurs outside Indiana and the victim resides in Indiana at the time of the offense, and the conduct is "sufficient under Indiana law to constitute an offense in Indiana."

The bill also provides that venue of any offense committed by use of the Internet or another computer network lies:

- in any county from which or to which access to the Internet or network was made, or
- in which any computer, computer data, computer software, or computer network that was used to access the Internet or other network is located.

The bill further provides for venue in the county of the victim's residence, if the offense occurs outside Indiana by use of the Internet, another network, or some other form of electronic communication and the victim resided in Indiana at the time of the offense. Steve Johnson of the Prosecuting Attorneys Council supported the bill, which the Committee voted unanimously to pass.

The House Roads and Transportation Committee heard HB 1030 concerning suspension of vehicle registration and plates, which was presented by Rep. Burton. The bill provides for the suspension of a vehicle registration and plates if a person has driving privileges suspended for OWI conviction under IC 9-30 or the person has a traffic violation as an unlicensed driver and an OWI conviction. This bill also provides for reinstatement plates to be issued under certain circumstances and criminal penalties for the unlawful sale, transfer or operation of vehicles subject to the license plate and registration suspension. The Committee raised several questions and concerns regarding the bill. The Indiana Trial Lawyers Association testified in support of the bill and the Indiana Prosecuting Attorneys Council raised several concerns with the bill, but supported the concept.

Due to the concerns raised at the hearing a sub-committee was formed to address the issues raised.

The Senate Corrections, Criminal and Civil Matters Committee heard SB 98 on probation revocation. The bill originated in the Sentencing Policy Study Committee in response to the Court of Appeals opinion in *Stephens v. State*. The bill amends IC 35-38-2-3 to give judges discretion to order execution of all or part of a person's suspended sentence if probation is revoked. The Prosecuting Attorneys Council, Public Defender Council and the Indiana Civil Liberties Union all testified in favor of the bill. Sen. Long, author of the bill, noted to the committee that the amendment to the statute is necessary, even in light of the Indiana Supreme Court's recent ruling in the *Stephens* case, so that the statute will be consistent with the case law. Sen. Mike Young and Sen. Brent Steele both commented that they were uncomfortable with judges having discretion when the probationer commits a serious felony. The bill passed out of committee 10-0.

The House Courts and Criminal Code Committee heard HB 1112, which expands the list of offenses eligible for direct placement in a community corrections. The bill amends IC 35-38-2.6-1(a) to include the offense of "operating while intoxicated with at least 2 prior unrelated convictions" if the person is required to spend the nonsuspendible part of the sentence in a work release program or on electronic monitoring. The

Prosecuting Attorney Council, Public Defender Council and Mothers Against Drunk Driving testified in support of the bill. The bill passed 12-0.

The House Courts and Criminal Code Committee also heard HB 1039 on defrauding drug or alcohol screening tests, which criminalizes the possession or use of a device or substance designed or intended to defraud a court-ordered drug or alcohol screening tests. The new offenses are Class B misdemeanors. The Prosecuting Attorneys Council testified in favor of the bill and suggested amending it to include community corrections and pre-trial release in the definition of "drug or alcohol screening test."

The Committee made the amendment by consent. Mothers Against Drunk Driving also testified in favor of the bill. The bill passed as amended 10-2.

In addition, the House Courts and Criminal Code Committee heard HB 1248 on jail costs for methamphetamine offenses, which would require persons charged with methamphetamine offenses to reimburse the county for the cost of incarceration at the county jail (if the person is unable to meet bond) if convicted of the offense. Parke County officials testified in favor of the bill, stating that their jail is filled with people charged with "meth" offenses. Because these offenders take up space that could be used to house offenders from the Department of Correction, the county lost \$275,000 in payments from DOC last year. The bill passed 12-0.

The House Courts and Criminal Code Committee heard HB 1241 on DNA samples from felons, which would expand the collection of DNA samples to all persons convicted of a felony, conspiracy to commit a felony or attempt to commit a felony. The bill requires the Department of Correction to collect the samples from persons committed to DOC facilities, and requires county sheriffs to collect the samples from persons held in county jails, placed in community corrections or placed on probation. The bill passed 12-0.

The House Family, Children, & Human Affairs Committee heard HB 1125 concerning eligibility for public assistance, which provides that persons convicted of substance abuse felonies may receive assistance under the federal Temporary Assistance for Needy Families (TANF) program, if they have completed or are participating in a substance abuse treatment program.

Rep. Foley sponsored the bill, stating that it was the only piece of legislation to come out of the forensic diversion study committee. Various people testified in support of the bill, including Steve Johnson of the Prosecuting Attorneys Council and Scott Cleveland of the Indiana Addictions Issues Coalition. The committee debated whether convicted felons should receive this assistance, finally determined that the definition of "substance abuse treatment" should be tightened, and referred the matter to a subcommittee. Steve Johnson offered his assistance and to work with IJC to draft language for this purpose.

## FAMILY & JUVENILE LAW:

The House Education Committee heard HB 1198 concerning student suspensions and expulsions, which was presented by Rep. Thompson. The bill would permit schools and courts to agree to court-assisted resolution of school suspension and expulsion cases, discussed the content of such agreements, and provided for a notice and hearing before the court. Judge Steve David, Boone Circuit Court, testified in support of this legislation and explained how the program in Boone County operates. There was a great deal of discussion among the Committee about the legislation. Those testifying in support included the School Corporation Association, the School Superintendents Association, Indiana Association of School Principals, ISTA, and the Indiana Urban School Association. There were two groups, Youth Services and Indiana State Bar Association, which gave qualified support for the bill, but raised several points of concern. The Indiana Civil Liberties Union testified in opposition to the bill based on concerns with due process issues. Also, the Indiana Juvenile Justice Task Force offered qualified opposition to the bill. Based on the discussion, a sub-committee was appointed to continue working on this legislation.

## PROBATE:

The House Judiciary Committee heard HB 1129 concerning inheritance tax and will depository, which was presented by Rep. Foley. This bill provides that a stepchild and lineal descendants of a stepchild are Class A transferees whether or not the transferor adopts the stepchild and an individual adopted after being totally emancipated shall be treated as a natural child of the adopting parent if the adoption was finalized before July 1, 2004. This bill would establish a will depository with the circuit court clerk and the clerk shall collect a fee of \$25 dollars, with some exceptions. The Committee heard supporting testimony from the Indiana State Bar Association and the Indiana Bankers Association. The bill passed 12-0.

The House Judiciary Committee also heard HB 1153 concerning probate, trust, and inheritance tax matters, presented by Rep. Foley. This bill contains numerous provisions, including subsequent childless spouse's division of real property, Uniform Transfer to Minor's Act, power of attorney, and pet trusts. The Indiana State Bar Association testified in support of this bill. The Indiana Bankers Association raised some concerns with the effective date of some of the provision of this bill due to training issues. The author preferred to resolve this on second reading.

The Committee made a minor amendment and passed the bill as amended 12-0.

## TRAFFIC:

The House Roads and Transportation Committee heard HB 1048 concerning minors on off-road vehicles and snowmobiles, which provides that it is a Class C infraction for a minor to operate or ride on an off-road vehicle or snowmobile without a helmet. A conservation officer in Ripley County testified in support of the bill, stating

that the proliferation of four-wheelers in counties that permit off-road vehicles to drive on county roads has increased the number and severity of injuries. The committee raised questions about exceptions to the bill for farm chores, supervision of minors, and land under the control of a guardian. The chair scheduled the bill for further discussion at a later date.

The House Road and Transportation Committee also heard HB 1057 concerning open alcoholic beverage containers, which provides it is a Class B infraction for a person on a public highway right-of-way in the passenger compartment of a motor vehicle to possess an alcoholic beverage container that is

1. opened,
2. that has a broken seal, or
3. from which some of the contents have been removed,

even if the vehicle is not in operation, except if the container is

1. possessed by a passenger in a vehicle designed or used primarily for the transportation of people for compensation or the living quarters of a house trailer,
2. in a locked glove compartment, or
3. (if the vehicle does not have a trunk) behind the last upright seat or in an area not normally occupied by a person.

The chairperson sponsored the bill, explaining that Indiana does not receive \$16 million in federal funds for building roads, because (unlike the surrounding states) it does not have an open container law that passes federal muster. Various highway and building proponents and a representative of INDOT testified in favor of the bill. The chair scheduled the bill for further discussion at a later date.